

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 980 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****AND****HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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ABDUL RAZAQUE ABDUL REHMAN SHAIKH - Appellant(s)

Versus

MAHESHBHAI NATWARLAL PATEL & 2 - Defendant(s)

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Appearance :

MR AV PRAJAPATI for Appellant(s) : 1,

None for Defendant(s) : 1 - 2.

MR HASMUKH THAKKER for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

The appeal is admitted. Mr Hasmukh Thakker
with Mr Palak Thakker waives service of notice of
admission for respondent No.3 – Insurance Company.

In view of the fact that the claim petition or this appeal do not involve any dispute about liability of the Insurance Company to satisfy the award as such, it is not necessary to issue notice for final hearing to the driver and the owner of the vehicle i.e. respondent Nos. 1 and 2.

At the request of the learned advocates for the parties, we take up this appeal for final hearing today.

2. This appeal is directed against the judgment and award dated 30.8.2004 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in MAC Petition No. 625 of 1996. The appeal is filed by the original claimant for enhancement of the amount of compensation awarded by the Tribunal at Rs.79,500/- with proportionate costs and interest at the rate of 9% per annum, on account of the injuries sustained by the claimant in a motor vehicle accident.

3. On 1.2.1995, the claimant was proceeding on his scooter in the city of Ahmedabad. The car insured by New India Assurance Co. Ltd., respondent No.3 herein, hit the scooter and in the collision the claimant received injuries including those resulting into fractures. The claimant filed the petition for compensation of Rs.3,00,000/-.

4. The Tribunal held that the accident was caused by negligence of the car driver to the extent

of 75%, and the claimant himself was also guilty of contributory negligence to the extent of 25%.

5. On the question of quantum of compensation, the Tribunal referred to the disability certificate issued by Dr Aditya Upadhyay, Orthopaedic Surgeon at Exh.36 and also the evidence of the said doctor. The Orthopaedic Surgeon had certified the disability of the whole body of the claimant at 24%. The Tribunal, however, assessed the disability of the entire body at 20%. Assessing the income of the deceased at Rs.1,500/- per month, the Tribunal computed the compensation for loss of future income at 20% of Rs.1,500/- i.e. $\text{Rs.}300 \times 12 \times 15 \text{ years} = \text{Rs.}54,000/-$. The multiplier of 15 years was adopted on the basis that the claimant was aged 45 years on the date of the accident. The Tribunal awarded various amounts under the following heads :-

Rs.54,000/-	For loss of earning capacity
Rs.15,000/-	For pain, suffering and loss of amenities and enjoyment of life
Rs.25,000/-	For medical expenses and other incidental charges pertaining to medical treatment
Rs. 9,000/-	For actual economic loss
Rs. 3,000/-	For special diet, conveyance and attendant charges

Rs.1,06,000/- Total compensation
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However, in view of the finding that the contributory negligence of the claimant was 25%, the Tribunal deducted 25% of the aforesaid amount and made an award for a sum of Rs.79,500/- with proportionate costs and interest at the rate of 9% per annum.

6. The original claimant is in appeal before us for enhancement of the compensation amount mainly on the ground that the Tribunal erred in assessing the income of the claimant at only Rs.1,500/- per month even though the claimant was working as a cable operator and also as a tailor before the accident. Further grievance is that as against the medical assessment of disability at 25% of the body as a whole, the Tribunal proceeded on the basis that there would be only 20% disability. Grievance is also made regarding the amount of compensation for pain, shock and suffering and loss of amenities of life. In view of the injuries sustained and the traumatic effect which the injuries have left on the claimant for the rest of his life, it is submitted that the compensation should have been awarded at Rs.35,000/-. It is also submitted that in view of the prolonged treatment, the Tribunal erred in awarding only Rs.3,000/- for attendant charges, special diet and transportation charges.

7. On the other hand, Mr Hasmukh Thakker with Mr Palak Thakker for respondent No.3 – Insurance Company has supported the award. It is submitted that the Tribunal has awarded just and proper compensation.

8. Since the learned advocate for the appellant – claimant has not been able to challenge the finding of the Tribunal on the question of negligence, we proceed to examine the challenge to the quantum of compensation.

9. In the first place, in view of the School Leaving Certificate which is produced for our perusal by the learned advocate for the claimant, we find that the claimant was born on 25.4.1958 and was aged 37 years on the date of the accident.

The claimant's case before the Tribunal was that he was working both as a cable operator and also as a tailor and that his monthly income was Rs.2000 to 2500 per month. If the claimant was working as a cable operator, it would not have been difficult for him to produce some documentary evidence to support the claim. We, therefore, do not find any fault with the Tribunal in taking the view that the claimant was only working as a tailor before the accident. Even proceeding on that basis, we are of the view that the assessment of income by the Tribunal at Rs.1,500/- per month is on the conservative side. In the facts and circumstances of the case, considering his age

(37 years) and the undisputed fact that the claimant was working as a tailor in the city of Ahmedabad, it would be reasonable to assess the prospective future income of the claimant for the purpose of computation of compensation at Rs.3,000/- per month.

10. As regards the disability suffered by the claimant, the Orthopaedic Surgeon, who also stepped into the witness box, had stated in his certificate at Exh.36 that in view of the injuries suffered by the claimant, which not only necessitated two operations and insertion of rod, but in view of the complications resulting from the absence of proper healing, there was loss of 30% muscular strength and also on the point of coordination there was tingling and numbness and weakness over left lower limb, post traumatic ostia arthritis at left hip and left knee joints. The Orthopaedic Surgeon accordingly assessed the disability at 24% of the body as a whole. It is surprising that after accepting the certificate of the Orthopaedic Surgeon and his oral evidence, the Tribunal assessed the disability of the entire body at 20% by making a reference to experience of marginal errors in assessment of disabilities by different experts. In the facts and circumstances of the case, particularly looking to the nature of the injuries suffered by the claimant and the doctor's finding about loss of 30% muscular strength on the left lower limb and the fact that the claimant is a tailor by occupation, there was no justification for reducing the percentage of the disability as assessed

by the Orthopaedic Surgeon. On the contrary, the same could have been easily rounded off to 25% for the purpose of computation of compensation. In view of our finding that the prospective future income of the claimant is required to be assessed at Rs.3,000/- per month, and the finding that the disability ought to have been assessed at 25% of the body as a whole, the loss of future income would be Rs.750/- per month i.e. Rs.9,000/- per annum. Considering that the claimant was aged 37 years on the date of the accident as per the school leaving certificate, we adopt the multiplier of 16 and, therefore, the compensation for loss of future income would be $\text{Rs.9,000} \times 16 = \text{Rs.1,44,000/-}$.

Since the claimant has suffered loss of past income for six months, the claimant will also be entitled for compensation of Rs.15,000/- under the said head.

11. Looking to the nature of the injuries, and the fact that the claimant had to undergo two surgeries for insertion of rod on the left lower limb and also the partial failure of the said remedial measure, the claimant would be required undergo the sufferings mentioned in the certificate of the Orthopaedic Surgeon and loss of amenities of life for a considerable long period spanning over three to four decades. We are, therefore, of the view that a sum of Rs.25,000/- shall be awarded as compensation for pain, shock and suffering and for loss of

amenities of life. The Tribunal has already awarded Rs.25,000/- for medical expenses and treatment on the basis of the documentary evidence produced at the trial. No enhancement is, therefore, required to be made under the said head. However, since the claimant had to undergo treatment for six months, we further award a sum of Rs.6,000/- for attendant, special diet and transportation charges. Resultantly, the aggregate amount would work out to Rs.2,15,000/- under the following heads :-

Rs.1,44,000/-	For loss of future income
Rs. 15,000/-	For loss of past income
Rs. 25,000/-	For pain, shock and suffering and loss of amenities of life
Rs. 25,000/-	For medical expenses and other incidental charges pertaining to medical treatment
Rs. 6,000/- -----	For special diet, transportation and attendant charges
Rs.2,15,000/- =====	Total compensation

However, in view of the finding on the question of negligence that the claimant was guilty of 25% contributory negligence, the amount will have to be reduced proportionately.

12. Accordingly, the appeal is partly allowed. The total amount of compensation to be paid to the claimant will be Rs.1,61,250/- with proportionate costs and interest at the rate of 9% per annum. Since the Tribunal had awarded a sum of Rs.79,500/-, the additional amount of Rs.81,750/- with proportionate costs and interest at the rate of 9% per annum from the date of the claim petition till the date of deposit shall be paid over by respondent No.3 – Insurance Company to the claimant within two months from the date of receipt of a certified copy of this judgment.

13. Out of the additional amount to be so deposited by respondent No.3 – Insurance Company, the Tribunal shall invest 80% of the amount in more than one fixed deposits with a nationalized bank near the residence of the claimant for a period of three years, with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, with permission to the claimant to withdraw interest periodically accruing on the fixed deposits and with a direction to the bank not to permit the account to be operated by any power of attorney holder other than a close relative of the claimant.

The balance amount shall be disbursed to the claimant by an account payee cheque after proper verification and after informing him about the amounts being invested/dispursed and the terms and conditions of investment.

14. The appeal is accordingly partly allowed in terms of the aforesaid directions.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

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